

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

Acme Brass & Aluminum Foundry, Inc.
920 Turner Street
Marshalltown, IA 50158

EPA ID No. IAD005274220

Respondent.

Proceeding under Section 3008 (a) and (g) of
the Resource Conservation and Recovery Act
as amended, 42 U.S.C. § 6928(a) and (g).

COMPLAINT AND CONSENT
AGREEMENT / FINAL ORDER

Docket No. RCRA-07-2004-0163

COMPLAINT AND
CONSENT AGREEMENT/FINAL ORDER

This administrative action is being conducted pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA") and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, Title 40 C.F.R. Part 22 ("Consolidated Rules of Practice").

The Complainant is the Director of the Air, RCRA, and Toxics Division of the United States Environmental Protection Agency ("EPA") Region 7, who has been duly delegated the authority to bring this action. The Respondent is Acme Brass & Aluminum Foundry, Inc. ("Acme"), a company incorporated under the laws of and authorized to conduct business in the State of Iowa. The authority to execute the Complaint portion of this Complaint and Consent Agreement/Final Order is provided to the Regional Administrators by EPA Delegation No. 8-9-A, dated March 20, 1985. The Regional Administrator has delegated this authority to the Director of the Air, RCRA and Toxics Division of EPA, Region 7, by EPA Delegation No. R7-8-9-A, dated January 1, 1995.

Complainant and Respondent have agreed to a settlement of the following Factual Allegations, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice, 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3). This Complaint and Consent Agreement/Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Complaint and Consent Agreement/Final Order.

Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$27,500 per day are now authorized for violations of Subchapter III of RCRA that occur after January 30, 1997. Based upon the facts alleged in this Complaint and Consent Agreement/Final Order and upon those factors which the Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in this Complaint and Consent Agreement/Final Order.

FACTUAL ALLEGATIONS

Jurisdiction, Statutory and Regulatory Requirements

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).
2. This Complaint and Consent Agreement/Final Order serves as notice that EPA has reason to believe that Respondent violated the regulations found at 40 C.F.R. §§ 262.11, 262.20, and 262.34.
3. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides that if EPA determines that any person has violated or is in violation of any requirement of Subchapter III, EPA may issue an order assessing a civil penalty for any past or current violation, require compliance, or both.
4. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$27,500 per day are now authorized for violations of Subchapter III of RCRA that occur after January 30, 1997. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), EPA must consider various factors in assessing a penalty, including the seriousness of the violations and any good faith efforts of Respondent to comply with the applicable requirements.

5. Respondent is an Iowa corporation authorized to conduct business in the State of Iowa and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
6. Respondent operates a facility located at 920 Turner Street, Marshalltown, Iowa ("Facility"). Respondent produces aluminum and brass castings.
7. Respondent began operations at this facility in 1962 and currently employs approximately 8 employees.
8. On or about May 16, 1988, Respondent submitted a Notification of Regulated Waste Activity as a generator of less than 1000 kilograms per month of toxic characteristic hazardous waste.
9. Respondent has been assigned facility identification number IAD005274220 for the Facility.
10. On or about May 20, 2002, a representative of EPA conducted a RCRA compliance evaluation inspection at the Respondent's Facility.
11. Based on a review of Respondent's records and on Respondent's hazardous waste generation rates, Respondent appeared to be operating as a conditionally exempt small quantity generator of hazardous wastes prior to EPA's inspection of Respondent's facility.

FIRST VIOLATION
FAILURE TO CONDUCT A HAZARDOUS
WASTE DETERMINATION

12. Complainant hereby incorporates the allegations contained in paragraphs 1 through 11 above, as if fully set forth herein.
13. Pursuant to 40 C.F.R. § 262.11, a generator of solid waste, as defined in 40 C.F.R. § 262.12, is required to determine if the solid waste is a hazardous waste.
14. To make the required hazardous waste determination, the generator must either apply knowledge of the hazard characteristic of the waste in light of the materials or the processes used, or test the waste according to the methods set forth in subpart C of 40 C.F.R. Part 261.
15. The regulations at 40 C.F.R. § 261.24(a), as found in Part 261 Subpart C, state that a solid waste exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, the extract from a representative sample of the waste contains any of the contaminants listed in 40 C.F.R. § 261.24 Table 1 at the concentration equal to or greater than the respective value given in that table.

16. Prior to the May 20, 2002, EPA inspection, Respondent had on at least two occasions collected sand samples in preparation for a hazardous waste determination. However, Respondent failed to collect representative samples from the foundry waste sand pile that was stored at Respondent's facility.

17. By incorrectly sampling the foundry waste sand, Respondent failed to complete an adequate hazardous waste determination, in violation of 40 C.F.R. § 262.11.

SECOND VIOLATION
OFFERING HAZARDOUS WASTE TO A DISPOSAL FACILITY
WITHOUT AN EPA IDENTIFICATION NUMBER AND
FAILING TO COMPLY WITH THE MANIFEST SYSTEM

18. Complainant hereby incorporates the allegations contained in paragraphs 1 through 17 as if fully set forth herein.

19. Pursuant to 40 C.F.R. § 262.12(c), a generator must not offer his hazardous waste to transporters or treatment, storage or disposal facilities that have not yet received an EPA identification number.

20. The regulations contained at 40 C.F.R. § 262.20 require, *inter alia*, that a generator of hazardous waste who transports, or offers for transportation, hazardous waste for offsite treatment, storage, or disposal to prepare a hazardous waste manifest and to designate on the hazardous waste manifest a facility which is permitted to handle the waste described on the manifest.

21. During the May 2002 EPA inspection, a representative sample of the foundry waste sand was collected by EPA and tested using the Toxicity Characteristic Leaching Procedure. Test results indicated that the concentration of lead in the waste was greater than the regulatory limit found in Table 1 of 40 C.F.R. § 261.24.

22. Therefore, pursuant to 40 C.F.R. §§ 261.20(a) and 261.24(a), the foundry waste sand is a hazardous waste with an EPA Hazardous Waste number of D008.

23. On or about June 17, 2002, Respondent removed approximately 15 tons of foundry waste sand and shipped it off-site for disposal.

24. At the time of this transaction, the transporter who transported this D008 hazardous waste to the disposal facility did not have an EPA identification number.

25. At the time of this transaction, the disposal facility which received the D008 hazardous waste did not have an EPA identification number.

26. Respondent sent this D008 hazardous waste off-site and did not prepare or utilize a hazardous waste manifest for this shipment.
27. Respondent's offering of hazardous waste for transportation to a transporter without an EPA identification number is a violation of 40 C.F.R. § 262.12(c).
28. Respondent's failure to ship the hazardous waste using a hazardous waste manifest and failure to designate on the hazardous waste manifest a facility that is permitted to handle the hazardous waste is a violation of 40 C.F.R. § 262.20.

THIRD VIOLATION
OPERATING AS A TREATMENT, STORAGE OR DISPOSAL FACILITY
WITHOUT A RCRA PERMIT OR RCRA INTERIM STATUS

29. Complainant hereby incorporates the allegations contained in paragraphs 1 through 28 above, as if fully set forth herein.
30. Pursuant to 40 C.F.R. §§ 261.5(b) and (g), a conditionally exempt small quantity generator's hazardous waste is excluded from full regulation under 40 C.F.R. Parts 262 through 266, if the generator complies with the regulations of 40 C.F.R. § 262.11 and he accumulates no more than 1000 kilograms of hazardous waste on-site. However, if a conditionally exempt small quantity generator accumulates at any time more than a total of 1000 kilograms of his hazardous wastes on-site, all of those accumulated wastes become subject to regulation under the special provisions of 40 C.F.R. Part 262 applicable to generators of between 100 kilograms and 1000 kilograms of hazardous waste in a calendar month.
31. As alleged above in paragraphs 13 through 17 above, Respondent failed to comply with the regulations of 40 C.F.R. § 262.11.
32. In addition, at the time of the May 2002 EPA inspection, Respondent was storing over 30 tons (or 27,270 kilograms) of foundry waste sand at its facility.
33. Therefore, Respondent became subject to regulation under the special provisions of 40 C.F.R. Part 262 applicable to generators of between 100 kilograms and 1000 kilograms of hazardous waste in a calendar month.
34. The provisions of 40 C.F.R. § 262.34(d) state that a generator who generates between 100 kilograms and 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status, provided that the quantity of waste accumulate on-site never exceeds 6000 kilograms.
35. A representative sample of the foundry waste sand taken during the EPA inspection was

tested using the Toxicity Characteristic Leaching Procedure. Test results indicated that the concentration of lead in the waste was greater than the regulatory limit found in Table 1 of 40 C.F.R. § 261.24.

36. Therefore, pursuant to 40 C.F.R. §§ 261.20(a) and 261.24(a), the foundry waste sand is a hazardous waste with an EPA Hazardous Waste number of D008.

37. Of the 30 tons of foundry waste sand that were being accumulated at the facility at the time of the May 2002 EPA inspection, approximately 15 tons were accumulated for more than 180 days since the date of the EPA inspection.

38. Respondent's storage of over 6000 kilograms of hazardous waste on-site for more than 180 days subjects Respondent to the requirement of having a permit or interim status, pursuant to Section 3005 of RCRA, for its on-site storage of hazardous waste.

39. Respondent does not have a RCRA Permit or RCRA Interim Status to operate as a storage facility, in violation of Section 3005 of RCRA.

CONSENT AGREEMENT

40. Respondent and EPA agree to the terms of this Complaint and Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Complaint and Consent Agreement/Final Order. The terms of this Consent Agreement and the Final Order shall not be modified except by a subsequent written agreement between the parties.

41. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Complaint and Consent Agreement/Final Order set forth below.

42. Respondent admits the facts stipulated in the Complaint and Consent Agreement/Final Order.

43. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the Complaint and Consent Agreement/Final Order.

44. Respondent and Complainant agree to conciliate the matters set forth in this Complaint and Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their respective costs and attorney's fees.

45. This Complaint and Consent Agreement/Final Order addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.
46. Nothing contained in the Final Order portion of this Complaint and Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.
47. The parties agree that Respondent shall pay a civil penalty of \$5,000, based on Respondent's demonstration of a limited ability to pay the penalty for the violations cited in the Complaint portion of this Complaint and Consent Agreement/Final Order. The payment shall be made according to the schedule set forth in Paragraph 1 of the Final Order.
48. Respondent understands that failure to complete the Compliance Actions described in the Final Order within the designated time frames may, among other things, subject Respondent to civil penalties of up to \$27,500 per day of non-compliance.
49. This Complaint and Consent Agreement/Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.
50. This Complaint and Consent Agreement/Final Order shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 12 of the Final Order, that all requirements hereunder have been satisfied.
51. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement/Final Order and to execute and legally bind Respondent to it.

FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Complaint and Consent Agreement/Final Order, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Respondent shall pay a mitigated civil penalty of \$5,000.00. This penalty shall be paid according to the following schedule:

- a. A payment of \$1,257.30 shall be due within thirty (30) days following the effective date of this Complaint and Consent Agreement/Final Order.
- b. Payments of \$1,257.30 each shall be due on each of the following dates:
September 15, 2004;
January 15, 2005;
May 15, 2005.

Failure to submit any of the required payments by the respective due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest. Failure to timely pay any portion of the civil penalty assessed may result in commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. Interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently one percent (1%) per annum for the period January 1, 2004 through December 31, 2004) on the unpaid balance until such civil penalty and accrued interest are both paid in full. As provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) will be assessed on any amount not paid within ninety (90) days of the due date.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

Regional Hearing Clerk
U.S. EPA Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

The Respondent shall reference the EPA Docket Number on the check. A copy of the check shall also be mailed to:

Mr. Alex Chen
Office of Regional Counsel
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Complaint and Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

4. Within the time periods specified, Respondent must take the following actions:
 - a. Beginning immediately upon Respondent's receipt of this Order, Respondent shall cease storing the waste foundry sand in piles on-site. In addition, continuing for one year following Respondent's receipt of this Order, Respondent shall conduct a toxicity analysis at least once every three months on the waste foundry sand waste stream prior to its off-site disposal, pursuant to the requirements of 40 C.F.R. § 262.11. Representative samples of only the waste foundry sand shall be collected using grab samples from each container or bag of sand being offered for disposal. All samples shall be analyzed using the Toxicity Characteristic Leaching Procedure (TCLP) for lead.
 - b. Within sixty (60) days of receipt of this Order, Respondent shall provide EPA with copies of all analytical testing results and all shipping documents (including, but not limited to, bills of lading and hazardous waste manifests, if applicable) relating to the sampling and disposal of waste foundry sand from May 20, 2002 through March 31, 2004.
 - c. Beginning on July 15, 2004, and continuing for one year, Respondent shall provide EPA with copies of all analytical testing results and all shipping documents (including, but not limited to, bills of lading and hazardous waste manifests, if applicable) relating to the sampling and disposal of waste foundry sand for the previous three months. These submittals shall be due to EPA on October 15, 2004; January 15, 2005; April 15, 2005; and July 15, 2005.
 - d. Within ninety (90) days of receipt of this Order, Respondent shall submit to EPA for approval a Sampling Plan to be performed by a qualified person to determine the nature and extent of any contamination at the facility caused by the foundry waste sand pile. The Sampling Plan shall include a Quality Assurance Project Plan (QAPP) addressing quality assurance, quality control, and chain-of-custody procedures in accordance with "EPA Requirements for Quality Assurance Project Plans" (EPA QA/R-5, EPA/240/B-01/003, March 2001) and "EPA Guidance for Quality Assurance Project Plans (EPA QA/G-5, EPA/600/R-02/009, December 2002). The Sampling Plan shall include a schedule for implementation and shall be submitted to EPA's representative for review and approval in accordance with the procedures set forth in paragraph 5 below. Once approved by EPA, Respondent shall implement the sampling plan in accordance with the schedules contained therein.

- e. Upon completion of sampling pursuant to the Sampling Plan, EPA will determine if any further clean-up of contamination at the facility is warranted due to the presence of hazardous constituents. If so notified by EPA, Respondent shall submit a Closure Plan within ninety (90) days of Respondent's receipt of such notice to EPA's representative for review and approval in accordance with paragraph 5 below. Any such Plan shall comply with 40 C.F.R. Part 264, Subpart G, and shall include a schedule for completion of necessary work and a cost estimate for closure that complies with 40 C.F.R. § 264.142. Respondent shall also establish financial assurance for closure of the facility in accordance with 40 C.F.R. § 264.143. Upon EPA approval of the cleanup plan, Respondent shall implement the plan in accordance with the schedules set forth therein.
5. All documents required to be submitted to EPA pursuant to this Final Order shall include schedules for implementation, and shall be submitted to:

Marc Matthews
ARTD/RESP
U.S. EPA Region VII
901 N. 5th Street
Kansas City, Kansas 66101

EPA will review each submission of a plan, report or other document by Respondent, and notify Respondent in writing of EPA's approval or disapproval of such document, or any part thereof. If a submission is disapproved in whole or in part by EPA, EPA will provide written comments to Respondent explaining the basis for its decision. Within thirty (30) days of receipt of EPA's comments pertaining to any submission, or within such longer time as the Parties may agree, Respondent shall amend/revise the disapproved submission, addressing all of EPA's comments, and resubmit the document to EPA. If EPA disapproves the revised submission, EPA may modify and approve the submission. In the event of such modification and approval, EPA will notify Respondent of the modification/approval and Respondent shall implement the plan as modified by EPA.

C. Parties Bound

6. This Final Order portion of this Complaint and Consent Agreement/Final Order shall apply to and be binding upon Complainant and Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Complaint and Consent Agreement/Final Order.

D. Reservation of Rights

7. Notwithstanding any other provision of this Complaint and Consent Agreement/Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Complaint and Consent Agreement/Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed twenty-seven thousand five hundred dollars (\$27,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.
8. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Complaint and Consent Agreement/Final Order.
9. Except as expressly provided herein, nothing in this Complaint and Consent Agreement/Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.
10. Notwithstanding any other provisions of the Complaint and Consent Agreement/Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.
11. The headings in this Complaint and Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Complaint and Consent Agreement/Final Order.
12. The provisions of this Complaint and Consent Agreement/Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

4/16/04
Date

William A. Spratlin
William A. Spratlin
Director
Air, RCRA, and Toxics Division
U.S. Environmental Protection Agency
Region 7

4/15/04
Date

Alex Chen
Alex Chen
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

RESPONDENT:

ACME BRASS & ALUMINUM FOUNDRY, INC.

4-14-04

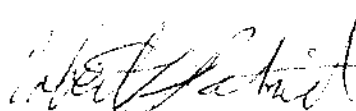
Date

Signature Tom Swab

Printed Name Tom Swab

Title Pres

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick
Regional Judicial Officer

Date April 20, 2007

IN THE MATTER OF Acme Brass & Aluminum Foundry, Inc., Respondent
Docket No. RCRA-07-2004-0163

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Alex Chen
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Tom Swab, President
Acme Brass & Aluminum Foundry, Inc.
920 Turner Street
Marshalltown, Iowa 50158

Dated: 4/20/04



Kathy Robinson
Regional Hearing Clerk